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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNICOLORS, INC., a California
corporation,

Plaintiff,

v.

WEB3SHOPIFY, INC., individually and
d/b/a “MsDressly”, a Delaware corporation;
and DOES 1 through 10,

Defendants.

Case No.:

PLAINTIFF’S COMPLAINT FOR:

1. COPYRIGHT
INFRINGEMENT
2. VICARIOUS AND/OR
CONTRIBUTORY
COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

1 Plaintiff, UNICOLORS, INC. (“UNICOLORS”), by and through its
2 undersigned attorneys, complains and alleges against Defendants as follows:

3 **NATURE OF ACTION**

4 1. Plaintiff seeks injunctive relief and damages stemming from the below
5 defendants’ acts of copyright infringement in violation of the laws of the United States
6 of America.

7 **JURISDICTION AND VENUE**

8 2. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §
9 101 *et seq.*

10 3. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
11 1338 (a) and (b).

12 4. The Court has personal jurisdiction over Defendants and each of them
13 because Defendants have purposefully directed their unlawful conduct to this
14 judicial district and have conducted substantial business in this judicial district.

15 5. Venue is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is
16 the judicial district in which a substantial part of the acts and omissions giving rise
17 to the claims occurred. Venue and personal jurisdiction may also be appropriate
18 under Fed. R. Civ. P. 4(k)(2).

19 **PARTIES**

20 6. Plaintiff UNICOLORS is a corporation organized and existing under
21 the laws of the State of California with its principal place of business located in
22 California.

23 7. Plaintiff is informed and believes and thereon alleges that Defendant
24 WEB3SHOPIFY, INC., individually and doing business as MsDressly and
25 MsDressly.com (“MsDressly”) is a Delaware corporation doing business in and
26 with the State of California and this district.

27 8. Plaintiff is informed and believes and thereon alleges that Defendants
28 DOES 1 through 10, inclusive, are other parties not yet identified who have

1 infringed Plaintiff's copyrights, have contributed to the infringement of Plaintiff's
2 copyrights, or have engaged in one or more of the wrongful practices alleged
3 herein. The true names, whether corporate, individual or otherwise, of Defendants
4 1 through 10, inclusive, are presently unknown to Plaintiff, which therefore sues
5 said Defendants by such fictitious names, and will seek leave to amend this
6 Complaint to show their true names and capacities when same have been
7 ascertained.

8 9. Plaintiff is informed and believes and thereon alleges that at all times
9 relevant hereto, each of the Defendants was the agent, affiliate, officer, director,
10 manager, principal, alter-ego, and/or employee of the remaining Defendants and
11 was at all times acting within the scope of such agency, affiliation, alter-ego
12 relationship and/or employment; and actively participated in or subsequently
13 ratified and/or adopted each of the acts or conduct alleged, with full knowledge of
14 all the facts and circumstances, including, but not limited to, full knowledge of
15 each violation of Plaintiff's rights and the damages to Plaintiff proximately caused
16 thereby.

17 **CLAIMS RELATED TO DESIGN KGP070**

18 10. Prior to the conduct complained of herein, Plaintiff composed an
19 original two-dimensional artwork for purposes of textile printing. It allocated this
20 design the name KGP070. This artwork was a creation of Plaintiff and Plaintiff's
21 design team, and is, and at all relevant times was, owned exclusively by Plaintiff.

22 11. Plaintiff applied for and received a United States Copyright
23 Registration for KGP070.

24 12. Prior to the acts complained of herein, Plaintiff sampled and sold fabric
25 bearing KGP070 to numerous parties in the fashion and apparel industries.

26 13. Following this distribution of products bearing KGP070, Plaintiff's
27 investigation revealed that certain entities within the fashion and apparel industries
28 had misappropriated KGP070 and were selling fabric and garments bearing illegal

1 reproductions and derivations of KGP070.

2 14. Plaintiff is informed and believes and thereon alleges that, following
3 this distribution of fabric bearing KGP070, Defendants, including certain DOE
4 Defendants, created, sold, manufactured, caused to be manufactured, imported
5 and/or distributed fabric and/or garments incorporating fabric that bears artwork
6 identical to or substantially similar to KGP070 (“KGP070 Infringing Product”).
7 The KGP070 Infringing Product includes garments designated “V Neck Floral
8 Chiffon Lantern Sleeve Blouse-Beige” which were available at the URL:
9 [https://www.msdressly.com/products/womens-blouses-v-neck-floral-chiffon-](https://www.msdressly.com/products/womens-blouses-v-neck-floral-chiffon-lantern-sleeve-blouses/)
10 [lantern-sleeve-blouses/](https://www.msdressly.com/products/womens-blouses-v-neck-floral-chiffon-lantern-sleeve-blouses/).




11 15. Plaintiff did not know or have reason to know of any of Defendants’
12 infringing conduct prior to three years before the filing of this Complaint.

13 16. A comparison of KGP070 (left) and non-exclusive exemplars of the
14 KGP070 Infringing Product (right) are set forth below; it is apparent that the
15 elements, composition, colors, arrangement, layout, and appearance of the designs
16 are substantially similar:

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<u>KGP070</u>	<u>KGP070 Infringing Product</u>
	 

17. The above comparisons make apparent that the elements, composition, arrangement, layout, and appearance of the design on KGP070 is substantially similar to the KGP070 Infringing Product.

18. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed copyright infringement with actual or constructive knowledge of Plaintiff's rights and/or in blatant disregard for Plaintiff's rights, such that said acts of copyright infringement were, and continue to be, willful, intentional and malicious, subjecting Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per infringement.

CLAIMS RELATED TO DESIGN KPO513

19. Prior to the conduct complained of herein, Plaintiff composed an original two-dimensional artwork for purposes of textile printing. It allocated this design the name KPO513 (collectively with KGP070, the “Subject Designs”). This artwork was a creation of Plaintiff and Plaintiff’s design team, and is, and at all relevant times was, owned exclusively by Plaintiff.

20. Plaintiff applied for and received a United States Copyright Registration for KPO513.

21. Prior to the acts complained of herein, Plaintiff sampled and sold fabric bearing KPO513 to numerous parties in the fashion and apparel industries.



22. Following this distribution of products bearing KPO513, Plaintiff’s investigation revealed that certain entities within the fashion and apparel industries had misappropriated KPO513 and were selling fabric and garments bearing illegal reproductions and derivations of KPO513.

23. Plaintiff is informed and believes and thereon alleges that, following this distribution of fabric bearing KPO513, Defendants, including certain DOE Defendants, created, sold, manufactured, caused to be manufactured, imported and/or distributed fabric and/or garments incorporating fabric that bears artwork identical to or substantially similar to KPO513 (“KPO513 Infringing Product”) (collectively with “KGP070 Infringing Product,” the “Infringing Products”). The KPO513 Infringing Product includes garments designated “V Neck Floral Chiffon Lantern Sleeve Blouse-White” which were available at the URL: <https://www.msdressly.com/products/womens-blouses-v-neck-floral-chiffon-lantern-sleeve-blouses/>.

24. Plaintiff did not know or have reason to know of any of Defendants’ infringing conduct prior to three years before the filing of this Complaint.

25. A comparison of KPO513 (left) and non-exclusive exemplars of the KPO513 Infringing Product (right) are set forth below; it is apparent that the

elements, composition, colors, arrangement, layout, and appearance of the designs are substantially similar:

<u>KPO513</u>	<u>KPO513 Infringing Product</u>
	

26. The above comparisons make apparent that the elements, composition, arrangement, layout, and appearance of the design on KPO513 is substantially similar to the KPO513 Infringing Product.

27. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed copyright infringement with actual or constructive knowledge of Plaintiff's rights and/or in blatant disregard for Plaintiff's rights, such that said acts of copyright infringement were, and continue to be, willful, intentional and malicious, subjecting Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per infringement.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement - Against All Defendants, and Each)

28. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

29. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to the Subject Designs, including, without limitation, through (a) access to Plaintiff's showroom and/or design library; (b) access to illegally distributed copies of the Subject Designs by third-party vendors and/or DOE Defendants, including without limitation international and/or overseas converters and printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) garments manufactured and sold to the public bearing fabric lawfully printed with the Subject Designs by Plaintiff for its customers.

30. Plaintiff is informed and believes and thereon alleges that one or more of the Defendants manufactures garments and/or is a garment vendor. Plaintiff is further informed and believes and thereon alleges that said Defendant(s) has an ongoing business relationship with Defendant retailer, and each of them, and supplied garments to said retailer, which garments infringed the Subject Designs in that said garments were composed of fabric which featured unauthorized print design(s) that were identical or substantially similar to the Subject Designs, or were an illegal derivation or modification thereof.

31. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyrights by creating, making, and/or developing directly infringing and/or derivative works from the Subject Designs and by producing, distributing and/or selling garments which infringe the Subject Designs through retail stores and/or on-line websites.

32. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its business in an amount to be established at trial.

1 33. Due to Defendants' acts of infringement, Plaintiff has suffered general
2 and special damages in an amount to be established at trial.

3 34. Due to Defendants' acts of copyright infringement as alleged herein,
4 Defendants, and each of them, have obtained direct and indirect profits they would
5 not otherwise have realized but for their infringement of the Subject Designs. As
6 such, Plaintiff is entitled to disgorgement of Defendants' profits directly and
7 indirectly attributable to Defendants' infringement of the Subject Designs in an
8 amount to be established at trial.

9 35. Plaintiff is informed and believes and thereon alleges that Defendants,
10 and each of them, have committed acts of copyright infringement, as alleged
11 above, which were willful, intentional and malicious, which further subjects
12 Defendants, and each of them, to liability for statutory damages under Section
13 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand
14 dollars (\$150,000.00) per infringement. Within the time permitted by law, Plaintiff
15 will make its election between actual damages and statutory damages.

16 **SECOND CLAIM FOR RELIEF**

17 (For Vicarious and/or Contributory Copyright Infringement – Against all
18 Defendants, and Each)

19 36. Plaintiff repeats, re-alleges, and incorporates herein by reference as
20 though fully set forth, the allegations contained in the preceding paragraphs.

21 37. Plaintiff is informed and believes and thereon alleges that Defendants
22 knowingly induced, participated in, aided and abetted in and profited from the
23 illegal reproduction and/or subsequent sales of garments featuring the Subject
24 Designs as alleged herein.

25 38. Plaintiff is informed and believes and thereon alleges that Defendants,
26 and each of them, are vicariously liable for the infringement alleged herein
27 because they had the right and ability to supervise the infringing conduct and
28 because they had a direct financial interest in the infringing conduct.

40. Due to Defendants', and each of their acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Designs. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of the Subject Designs, in an amount to be established at trial.

PRAYER FOR RELIEF

- a. That Defendants, their agents and employees be enjoined from infringing Plaintiff's copyrights in any manner, specifically those for the Subject Designs;
- b. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants through their infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et seq.;

- 1 c. That a trust be imposed over the revenues derived by Defendants, and
2 each of them, through the sales or distribution of the products at issue;
3 d. That Plaintiff be awarded its attorneys' fees as available under the
4 Copyright Act U.S.C. § 101 et seq.;
- 5 e. That Defendants, and each of them, account to Plaintiff for their
6 profits and any damages sustained by Plaintiff arising from the
7 foregoing acts of infringement;
- 8 f. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 9 g. That Plaintiff be awarded the costs of this action; and
- 10 h. That Plaintiff be awarded such further legal and equitable relief as the
11 Court deems proper.

12 **JURY DEMAND**

13 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ.
14 P. 38 and the 7th Amendment to the United States Constitution.

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16 Dated: January 16, 2024

Respectfully submitted,

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18 By: /s/ Scott Alan Burroughs
19 Trevor W. Barrett, Esq.
20 Scott Alan Burroughs, Esq.
21 Frank R. Trechsel, Esq.
22 DONIGER / BURROUGHS
23 *Attorneys for Plaintiff*
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